

Message Text

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ACTION SS-14

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FM AMEMBASSY KINSHASA

TO SECSTATE WASHDC NIACT IMMEDIATE 9354

C O N F I D E N T I A L KINSHASA 7261

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LIMDIS

FOR UNDER SECRETARY ROGERS

E.O. 11652: GDS

TAGS: EFIN, EGEN, CG

SUBJECT: INGA-SHABA PAYMENT FACILITY AND GECAMINES LOAN

REF: (A) KINSHASA 7260; (B) STATE 214210

1. REF (A) MAKES OUR BASIC PITCH AGAINST THE PAYMENT FACILITY FOR THE INGA-SHABA COST OVERRUN FINANCING. WE THOUGHT YOU MIGHT WISH TO HAVE A LOOK AT IT BEFORE PASSING IT ON TO EXIM.

2. WE WANTED ALSO TO RAISE PRIVATELY OUR DOUBTS ABOUT CONGRESSIONAL INTENT CONCERNING THE PAYMENT FACILITY AGREEMENT. IN REF (B) EXIM WRAPPED ITS CASE FOR A PAYMENT FACILITY AROUND EXIM'S STATUTORY MANDATE REQUIRING "REASONABLE ASSURANCE OF REPAYMENT" AND INDICATIONS WHICH EXIM HAD FURNISHED CONGRESS, AMONG OTHERS, ABOUT THE INCLUSION OF A PAYMENT FACILITY AGREEMENT.

(A) TO THE ASSERTION THAT EXIM'S STATUTORY MANDATE REQUIRES IT TO INSIST UPON THE PAYMENT FACILITY, WE WOULD ASK IF THE PAYMENT FACILITY ITSELF PROVIDES A LEGAL ASSURANCE OF PAYMENT SINCE IT IS CLEARLY STATED IN THE PROPOSED AGREEMENT THAT IT "DOES NOT AND IS NOT INTENDED TO CREATE A SECURITY INTEREST OR OTHER LIEN, PLEDGE CHARGE OR ENCUMBRANCE ON OR WITH RESPECT TO ANY ASSETS OR

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REVENUES OF ANY PERSON, NOR GRANT TO ANY DEBT OF THE REPUBLIC OF

ZAIRE MORE FAVORABLE STATUS THAN TO ANY OTHER DEBT OF THE REPUBLIC."

(B) IF THE PAYMENT FACILITY IS NOT IN FACT A LEGALLY ENFORCE-
ABLE ASSURANCE OF PAYMENT, THEN WE ASK WHY THE FACILITY IS CON-
SIDERED NECESSARY TO FULFILL THE REQUIREMENT OF "REASONABLE
ASSURANCE". IT WOULD SEEM TO US THAT ZAIRES PERFORMANCE UNDER
THE EXISTING INGA SHABA LOAN ALREADY PROVIDES SUCH REASONABLE
ASSURANCE. UNDER THE TERMS OF THE PARIS CLUB ACCORD OF JUNE,
1976, ZAIRES IS REQUIRED TO PAY ONLY THE INTEREST CHARGES ACCRUING
SINCE JULY, AND AS OF NOW THE GOZ IS UP TO DATE. IN FACT, WE
HAVE BEEN INFORMED THAT ZAIRES HAS ALSO PAID FNCB'S UNGUARANTEED
PORTION OF THAT LOAN. IN SUM, WHEN WE TAKE INTO ACCOUNT THE DOWN
PAYMENT THAT THE GOZ HAS ALREADY MADE ON THE OVERRUN FINANCING
AND THEIR PERFORMANCE SINCE JULY ON THE INTEREST PAYMENTS, WE
THINK IT IS FAIR TO SAY THAT THE LOANS IN QUESTION HAVE RECEIVED
DE FACTO MORE FAVORABLE TREATMENT THAN ANY OTHER.

(C) WE UNDERSTAND THAT EXIM INFORMED THE CONGRESS THAT IT
INTENDED TO REQUIRE THE BORROWER TO ESTABLISH A "TRUST ACCOUNT",
BUT THAT EXIM SUBSEQUENTLY DECIDED THAT SUCH AN ACCOUNT WHICH
WOULD INDEED CREATE A LIEN ON ZAIRES ASSETS/REVENUES WAS NOT
ADVISABLE. HAS THE CONGRESS NOW BEEN INFORMED THAT EXIM WILL
REQUIRE INSTEAD THE PAYMENT FACILITY AGREEMENT, AND HAS CONGRESS
INSISTED ON THIS AS A PRECONDITION?

3. IN REF (A), WE ALSO DID NOT MENTION THE NEED TO MOVE MORE
QUICKLY ON THE EXIM LOAN TO GECAMINES, BUT YOU WILL RECALL OUR
CONCERN THAT THIS IMPORTANT BALANCE OF PAYMENTS SUPPORT -- PART OF
THE ORIGINAL \$60 MILLION PACKAGE PROMISED BY THE SECRETARY OVER
A YEAR AGO -- BE SEPARATED FROM THE INGA SHABA OVERRUN FINANCING.
THANKS FOR YOUR HELP.
CUTLER

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